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09/720,908	03/09/2001	Elisabeth Lakso	000500-282	7370

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

# Office Action Summary

Application No.

09/720,908

Applicant(s)

LAKSO ET AL

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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1. The abstract of the disclosure is objected to because the a marked up copy of the abstract has not been provided, i.e. not in compliance with 37 CFR 1.121. Also lines 2, i.e. "and ...therefrom", and 7-9, i.e "Components...material and", are redundant. On lines 6 "and possible other sheets" should be deleted. On line 9, "packaging materials are" should be --Packaging materials are also--. Correction is required. See MPEP § 608.01(b).
2. The proposed sheet of drawings, filed on 1-2-03 have been approved. A formal set of the are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance. See attached PTO-948.
3. The disclosure is objected to because of the following informalities: on page 1, line 12, "a...components" should be --and a method of producing an absorbent article--. On page 2, line 9, after "storage,", --and,-- should be inserted and on line 11, "in size" should be --the size of the dumps--. On page 3, line 14, after "source", --which is-- should be inserted. On page 5, line 5, "Biodegradable" should be --biodegradable--. On page 5, lines 17-18, "but...The" should be --e.g. they may include another type of plastic film or some other suitable material. The--. On the last line after "film", --form-- should be inserted. On page 9, line 13, before "can", --which-- should be inserted and on line 14, after "manner,", --is-- should be inserted. On page 10, line 14, "which do not deplete" should be --the depletion--, on line 18, "is" should be --has been-- and on the last line "on" should be --in--. On page 11, line 14, "5" should be --(5)--. On page 11, lines 17 and 19, page 12, lines 8 and 9, page 16, line 18, page 17, line 8, "elastic" should be --elastics--. On page 12, line "is" should be --are--, on line 10, "in" should be --at-- and on line 12, "by means

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of" should be --are means by--. On page 13, line 16, "consisting" should be --consist--. On page 14, line 10, ",", should be deleted. On page 15, line 11, after "containing", --the-- should be inserted, on line 12, "by" should be deleted, and on line 13, "remaining" should be --other--. On page 17, lines 10 and 13, "(19)" should be deleted. On line 13, "packeting" should be --packaging--. On line 16, after, "packaged", --,-- should be inserted. On line 14, "where several articles" should be --severally-- and "are" should be --and--. On page 18, line 11, before "film", --the-- should be inserted. On the second to last line "Neither...be" should be --Nor does the packaged article need to be--.

Appropriate correction is required.

4. Claims 8-22, and 27-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 8, it is unclear what the invention is, i.e an article or a material, because it is unclear where the preamble ends and the claim body begins, i.e. "comprising" is usually recognized as the transitional phrase. For example, ",wherein...comprised of" on lines 1-2 could be rewritten as -- comprising at least one component--. Is claim 15 a independent or dependent claim? For example, on line 3, "one...8" could be rewritten as --at least one absorbent article which includes at least one component comprised of material the contains polythene wherein the polythene has been produced from renewable raw material--. In claim 16, the terminology "optionally other sheets;" should be deleted because it is unclear whether the sheets are also of the

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film and since the claim includes "comprising" terminology the scope does not change, i.e. could have other steps. In regard to claims 19-22, are the component in the independent claim and the claimed structure one and the same? If so, after "wherein", --said at least one article component is-- should be inserted and "is formed from said film" should be deleted.

5. Claims 1-7 and 34 are objected to because of the following informalities: in claim 1, line 4, "produced" should be deleted. Appropriate correction is required.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

*mm*  
*8-13-03* 8. Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's disclosure, Barrocas '179, Toms '679, Bruggemann '295, Cargill '941, and Dupont '200.

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In regard to the claims, Applicants' disclosure at page 5, lines 9-14 and page 9, last two lines, page 5, lines 15-18, as well as Toms '679 at col. 1, lines 23-27 and col. 11, lines 54-57, Cargill at Description of the Prior Art, admits that it is known to produce components of absorbent articles or packages from material produced from polythene, also known as polyethylene, derived from non-renewable materials, i.e. petroleum products. Applicants' disclosure at paragraph bridging pages 14-15, page 16, first full paragraph, page 17, third full paragraph and page 18, line 8, as well as Toms '679 at col. 9, lines 15-66, Cargill at Description of the Prior Art, admit that manufacture of a film or material, including those of polythene, components from that film or material, absorbent articles from the components, film or material, alone or with other components, prepacking, manufacture of the prepack or package and methods of manufacture, including those of polythene, is also known. Applicants' disclosure at page 9, lines 4-15 and page 16, lines 6-18, as well as Barrocas et al '179 at col. 1, lines 4-34, admit it is known to produce ethane from ethanol, a renewable material, and to produce polythene from such ethane. Therefore, the invention of the claims is known except for, and as set forth by Applicants at page 9, line 15-page 10, line 2, the use of renewable raw materials in the manufacture of the polythene used in absorbent articles or packaging materials. The invention as set forth by Applicants at page 3, lines 1-3 is for the purpose of making such more environmental friendly than known counterparts. In other words, the invention is using renewable raw materials to manufacture a material for use in products in a field of endeavor instead of using non-renewable raw materials to make such same material for use in those same products in that same field of

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endeavor as known in order to be more environmentally friendly. However, Applicants' disclosure at page 3, line 25-page 4, line 8, as well as Bruggemann '295 at col. 1, lines 5-36, Cargill at Description of the Prior Art and Dupont '200 at Technical Background and paragraph bridging pages 4-5, disclose that it is also known and desired to create environmentally friendly diapers or packages by using films, materials and components produced of renewable raw materials rather than non-renewable raw materials for such. Therefore, from the Applicant's admissions as to what is known and the prior art, to also use renewable raw materials to produce the polythene in absorbent articles and packages instead of the previously used non-renewable materials used to produce such same polyethene would be obvious to one of ordinary skill in the art in view of the recognition that such would also be more environmentally friendly and the recognition that it is well known how to make polythene films, materials and components from renewable materials and that such is environmentally friendly.

Further, with regard to claims 8-15, 23-28 and 31-33, these claims are product by process claims. As set forth in MPEP 2113 the patentability of such claims are based on the product itself not the method of production. If the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. The end product in the instant claims are absorbent article components or packages of polythene. As set forth supra, absorbent article components or packages of polythene of nonrenewable raw materials, e g. petroleum based products, are well known. Therefore, absent a showing that the claimed process of producing the claimed products

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results in a structurally different end product, the claimed products are not deemed to patentably distinguish over the known products of nonrenewable materials.

9. Applicant's remarks with regard to the formal matters have been noted but are either deemed moot in that such have not been raised or are deemed nonpersuasive for the reasons set forth above. Applicant's remarks with regard to the prior art rejection have been considered but are deemed nonpersuasive for the reasons set forth in the rejection and also for the following reasons. Applicant is using a known material, i.e. polythene made from renewable raw materials, and processing it in known manners. It is being used in lieu of the polythene material from nonrenewable sources for the same reasons that the prior art created the polythene material made from renewable materials in the first place, i.e. environmental friendliness. The polythene from nonrenewable material has also been replaced with materials from renewable materials, other than the polythene of renewable materials, previously in absorbent products and packages for the same purpose of environmental friendliness.

It is Applicant's position that the prior art teaches away from polyethene. However, while the references teach that polyethene from nonrenewable sources may be undesirable, where do they teach that polyethene from renewable sources is undesirable? If Applicant maintains this argument a specific citation is requested, i.e. name of reference, page or col, line, etc. As far as polyethene from renewable materials, the references of record, e.g., Dordick at col. 3, lines 5-22 Bruggemann et al at col. 1, lines 5-36, and portions of the instant specification at the paragraph bridging pages 3-4 indicate that materials based on renewable raw materials are, in at least theory,



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biodegradable, i.e that polythene of renewable materials would be biodegradable. It is further noted that while, e.g. Cargill teaches biodegradable materials these materials are also based on renewable raw materials. Applicant's representative's uncollaborated opinion on page 14, second full paragraph have been noted. The lack of "advocation" could be warranted by other factors, i.e consumer preference, than lack of obviousness.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art teaches disclosed and/or claimed features.

11. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

KMR

March 13, 2003

*K. M. Reichle*  
KIM REICHEL  
PATENT EXAMINER